

STATUS OF THE CLAIMS

Claims 1-44 were originally filed in this patent application. In response to a first office action dated 01/29/2008, an amendment was filed on 04/28/2008 that cancelled claims 1-18, 22 and 24-44, amended claim 19, and added claim 45. In response to a second office action dated 08/20/2008, an RCE and amendment was filed on 11/20/2008 that amended claims 19 and 45 and added claim 46. In the pending office action dated 12/23/2008, claims 19-21, 23 and 45-46 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,146,496 to Circenis *et al.* (hereinafter “Circenis”) in view of U.S. Patent Application Publication No. 2002/0156824 to Armstrong *et al.* (hereinafter “Armstrong”). No claim was allowed. In this amendment, claims 19-21 and 23 have been cancelled. Claims 45-46 are currently pending.

REMARKS

Examiner’s Statement regarding IDS filed on 10/30/2008

In the pending office action, the examiner states the information disclosure statement filed 10/30/2008 fails to comply with the provisions of 37 C.F.R. §1.97, 1.98 and MPEP §609 because the cited non-patent literature has not been received and entered into the electronic file wrapper, and therefore has not been considered. An inspection of the electronic file wrapper in Private PAIR shows the NPL document in question, namely the Sugerman reference cited in the IDS filed 10/30/2008, was also filed on 10/30/2008, and is present in the electronic file wrapper. As a result, the examiner’s assertion that the NPL document has not been received and entered into the electronic file wrapper is in error, and applicant respectfully requests the examiner to consider the Sugerman reference cited in the IDS filed on 10/30/2008.

Rejection of claims 19-21, 23 and 45-46 under 35 U.S.C. §103(a)

The examiner rejected claims 19-21, 23 and 45-46 under 35 U.S.C. §103(a) as being unpatentable over Circenis in view of Armstrong. Claims 19-21 and 23 have been cancelled herein, and therefore need not be addressed. The remaining claims are addressed below.

Claim 45

Claim 45 recites:

. . . when the selected resource is dedicated to one of the plurality of logical partitions, performing the steps of:
 starting a meter timer;
 using the selected resource until a time to bill occurs;
 sending a record of metered usage to the resource provider based on value of the meter timer; and
 the resource provider sending a bill for the metered usage of the selected resource to a customer; . . .

In rejecting these limitations in claim 45, the examiner states Circenis discloses these limitations at col. 6 lines 37-45 and 46-60 of Circenis. While Circenis briefly references the ICOD computer system is implemented as a partitionable computer system, nowhere does Circenis distinguish between a selected resource dedicated to one of the plurality of logical partitions and a selected resource shared between first and second logical partitions as recited in claim 45. As a result, the examiner's assertion that Circenis discloses performing these steps "when the selected resource is dedicated to one of the plurality of logical partitions" is in error.

In the rejection, the examiner states Circenis does not explicitly disclose:

. . . when the selected resource is shared between first and second logical partitions, performing the above-mentioned steps for each logical partition.

Applicant respectfully asserts the examiner has not addressed each and every limitation in claim 45. Claim 45 does not recite "when the selected resource is shared between first and second logical partitions, performing the above-mentioned steps for each logical partition" as stated by the examiner. The "above-mentioned steps" referenced by the examiner are the steps that are performed when the selected resource is dedicated to one of the plurality of logical

partitions. Contrary to the examiner's assertion, the steps performed when the selected resource is not dedicated to one of the plurality of logical partitions and is shared between first and second logical partitions are different than the steps performed when the selected resource is dedicated to one of the plurality of logical partitions. The first logical partition uses the selected resource without charge until the metered use of the selected resource by the first logical partition exceeds a first predetermined non-zero threshold that specifies allowable usage of the selected resource by the first logical partition. The second logical partition similarly uses the selected resource without charge until the metered use of the selected resource by the second logical partition exceeds a second predetermined non-zero threshold that specifies allowable usage of the selected resource by the second logical partition. These steps have not been addressed by the examiner. As a result, the examiner has failed to establish a prima facie case of obviousness for claim 45 under 35 U.S.C. §103(a).

Nowhere do either of *Circenis* or *Armstrong* teach or suggest the first and second predetermined non-zero thresholds recited in claim 45. For this reason alone, claim 45 is allowable over the combination of *Circenis* and *Armstrong*.

The examiner attempts to combine *Circenis* and *Armstrong* in a way that allegedly reads on the limitations in claim 45, but this attempt is ineffective. *Circenis* states at col. 8 lines 8-12:

When the ICOD computer system is implemented as a partitionable computer system, there may be multiple ICOD software agents executing autonomously on various partitions of the partitionable ICOD computer system.

Circenis thus teaches in a partitioned computer system, there may be multiple ICOD software agents executing *autonomously* on various partitions. Autonomous operation of two different ICOD software agents as taught in *Circenis* expressly teaches away from the resources being shared between logical partitions as taught in *Armstrong*. Thus, the express teachings of *Circenis* defeat the examiner's proposed combination of *Circenis* and *Armstrong*. Because separate ICOD software agents in *Circenis* execute autonomously on various partitions, these ICOD software agents have no way to share a resource as taught in *Armstrong*. As a result, the examiner's combination of *Circenis* and *Armstrong* is in error.

In the rejection, the examiner states:

In regard [sic] sharing a resource between first and second logical partitions, although Circenis does contemplate implementing the ICOD computer system on a partitionable computer system, the details regarding the implementation of the OCID [sic] computer system are absent. Armstrong fills in this gap by teaching that certain resources may be allocated such that there is no sharing of single resources among different partitions ("dedicated"), while other resources may be shared among partitions ("pooled"). (See Armstrong, paragraph 23.)

Circenis does provide sufficient details regarding the implementation of the partitioned ICOD computer system to determine a combination with Armstrong would not have been obvious to one of ordinary skill in the art at the time the invention was made. Circenis states at col. 8 lines 8-12 quoted above that multiple ICOD agents may execute autonomously on various partitions. Autonomous operation implies the ICOD agents in different partitions do not communicate with each other or rely on each other in any way. The sharing of a selected resource by two logical partitions as recited in claim 45 requires setting a first predetermined non-zero threshold for the first logical partition, and requires setting a second predetermined non-zero threshold for the second logical partition. Thus, there is a relationship between the first and second predetermined non-zero thresholds for the shared selected resource. Because the first and second predetermined non-zero thresholds recited in claim 45 must be related to not exceed the total capacity of the selected resource, the autonomous operation of the ICOD agents in Circenis expressly teaches away from with combination with Armstrong suggested by the examiner. As a result, the examiner's combination of Circenis and Armstrong is improper, and would not have been obvious to one of ordinary skill in the art at the time the invention was made.

The capacity balance of Circenis applies to the entire computer system, not to a logical partition. While Circenis mentions a partitionable computer system, this does not amount to an affirmative teaching regarding specific features of the partitions. Claim 45 recites "the first logical partition using the selected resource without charge until the metered use of the selected resource by the first logical partition exceeds a first predetermined non-zero threshold that specifies allowable usage of the selected resource by the first logical partition" and "the second logical partition using the selected resource without charge until the metered use of the selected resource by the second logical partition exceeds a second predetermined non-zero threshold that specifies allowable usage of the selected resource by the second logical partition." Note the first

predetermined non-zero threshold in claim 45 specifies “allowable usage of the selected resource by the first logical partition” and the second predetermined non-zero threshold in claim 45 specifies “allowable usage of the selected resource by the second logical partition.” Claim 45 thus recites two separate thresholds used by two different logical partitions. Neither Circenis nor Armstrong teaches the first and second predetermined non-zero thresholds recited in claim 45. For this reason alone, claim 45 is allowable over the combination of Circenis and Armstrong.

The capacity balance in Circenis applies to the entire computer system, and therefore cannot read on either of 1) allowable usage of the selected resource by the first logical partition, or 2) allowable usage of the selected resource by the second logical partition, as recited in claim 45. In addition, claim 45 meters use of the selected resource by the first logical partition above the first predetermined non-zero threshold, and meters use of the selected resource by the second logical partition above the second predetermined non-zero threshold. This implies the amount of capacity below the first and second predetermined non-zero thresholds is not metered. While Circenis teaches metering actual usage of a resource, Circenis is devoid of any teaching that reasonably reads on metering use of the selected resource by the first logical partition that exceeds the first predetermined non-zero threshold, and metering use of the selected resource by the second logical partition that exceeds the second predetermined non-zero threshold. For many the reasons given above, claim 45 is allowable over Circenis.

Claim 45 recites:

...sending a record of metered usage of the selected resource *by the first logical partition* that exceeds the first predetermined non-zero threshold to the resource provider;
...
...sending a record of metered usage of the selected resource *by the second logical partition* that exceeds the second predetermined non-zero threshold to the resource provider; ...

The result is claim 45 sends a record of metered usage to the resource provide based on value of the meter timer when the selected resource is dedicated to one of the plurality of logical partitions, and when the selected resource is not dedicated to one of the plurality of logical partitions and is shared between first and second logical partitions, sends a record of metered usage for both first and second logical partitions that exceeds respective first and second

predetermined non-zero thresholds. Nowhere does Circenis teach the sending of these three different records of metered usage to the resource provider under the specific conditions specified in claim 45.

For the many reasons given above, claim 45 is allowable over the combination of Circenis and Armstrong. Applicant respectfully requests reconsideration of the examiner's rejection of claim 45 under 35 U.S.C. §103(a).

Claim 46

Claim 46 includes many of the limitations in claim 45 discussed above, and is therefore allowable for the same reasons.

Conclusion

In summary, none of the cited prior art, either alone or in combination, teach, support, or suggest the unique combination of features in applicant's claims presently on file. Therefore, applicant respectfully asserts that all of applicant's claims are allowable. Such allowance at an early date is respectfully requested. The Examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

By /derekpmartin/
Derek P. Martin
Reg. No. 36,595

MARTIN & ASSOCIATES, L.L.C.
P.O. Box 548
Carthage, MO 64836-0548
(417) 358-4700